

STATE OF MICHIGAN
COURT OF APPEALS

JERRY GORNEY and PATRICIA GORNEY,

Plaintiffs-Appellants,

v

ROBERT BRUCE RENNIE, JR.,

Defendant-Appellee.

UNPUBLISHED

April 21, 2000

No. 209709

Macomb Circuit Court

LC No. 94-002120-NI

Before: Collins, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendant's motion for summary disposition after remand from this Court. We affirm.

Plaintiff Jerry Gorney, a police officer for the City of Fraser, was stopped at a traffic light on Utica Road when his vehicle was struck from behind by a car driven by defendant. Plaintiffs brought this third-party negligence action, and the trial court granted summary disposition under MCR 2.116(C)(10), finding that the action was barred by the fireman's rule.

In the initial appeal, this Court reversed and remanded for further proceedings in light of *Gibbons v Caraway*, 455 Mich 314; 565 NW2d 663 (1997). *Gorney v Rennie*, unpublished opinion of the Court of Appeals, issued August 26, 1997 (Docket No. 185671). The Court found that the fireman's rule applied to plaintiffs' claim, but remanded the matter for a determination whether the willful, wanton, and grossly negligent conduct exception to the rule applied. After remand, the trial court found that the exception was inapplicable, and again granted summary disposition.

A trial court on remand possesses the authority to take any action that is consistent with the opinion of the appellate court. *Driver v Hanley (After Remand)*, 226 Mich App 558, 564; 575 NW2d 31 (1997). The law of the case doctrine provides that a ruling by an appellate court with regard to a particular issue binds the appellate court and all lower tribunals with respect to that issue. *Id.* at 565. A question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal of the same case. *Id.* This rule applies without regard to the correctness of the prior determination. *Id.*

In the initial opinion, this Court held that the fireman's rule, as enunciated in *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83; 520 NW2d 633 (1994), applied to bar recovery by a officer injured in a traffic accident while on patrol because the risk of a traffic accident is inherent in fulfilling the duties of a police officer assigned to traffic enforcement. The Court specifically applied *Gibbons, supra*, and remanded the matter to the trial court to determine whether the willful, wanton, and grossly negligent conduct exception to the fireman's rule applied. The trial court complied with this direction on remand, and found the exception inapplicable. There is no basis to revisit this Court's initial opinion.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski